

1 same document number that was on the index that Mr. Lehmkuhl
2 prepared in April by April 28th.

3 JUDGE SIPPEL: Another question?

4 BY MR. BECKNER:

5 Q Yes, I am, Your Honor. Mr. Barr I'd like you to
6 turn to Exhibit 18 in the notebook, that's Time Warner
7 Cablevision Exhibit 18 the surreply. Do you have that in
8 front of you sir?

9 A Yes.

10 Q Okay. First a general question. Can you tell me
11 who was the author of the first draft of this document or if
12 there were more than one author, can you tell me who they
13 were?

14 A No I drafted the document.

15 Q Okay. And what was your source of information for
16 the facts contained in the document?

17 A It would have been Peter Price, Behrooz Nourain
18 and possibly from members of Mr. Constantine's firm.

19 Q Did you interview Mr. Price and Mr. Nourain in
20 connection with the drafting of this document?

21 A Yes, I believe I did.

22 Q All right. Now I like you to take a look at page
23 three of the surreply. Paragraph that begins in the middle
24 of the page. Do you have that sir?

25 A Yes.

1 Q All right.

2 A It begins applications processing.

3 Q Yes, I was going to ask about that sentence. Now
4 this -- the first sentence of the paragraph says that
5 application processing for each of the above referenced
6 sites has exceeded the norm, due to the frequency
7 coordinators' use of incorrect emission designators.

8 Was that information that you received from Mr.
9 Nourain?

10 A I don't specifically recall.

11 Q Well did you make any independent investigation
12 yourself in support of this particular statement that I just
13 read?

14 A I questioned Peter Price and Behrooz in
15 preparation for this. I think I was aware that I had given
16 my firm, Mike Lehmkuhl in particular was handling the
17 emission designator problem. I was aware that this had been
18 a long standing problem.

19 Q Were you aware of when that problem was cleared
20 up?

21 MR. SPITZER: Objection, Your Honor, I'm not sure
22 if it had been cleared up? Is that limited by any contents?

23 JUDGE SIPPEL: Well let's not make any suggestions
24 here. You've got an objection what that there's no
25 foundation?

1 MR. SPITZER: No foundation, Your Honor.

2 JUDGE SIPPEL: I'll sustain the objection.

3 BY MR. BECKNER:

4 Q Okay. Mr. Barr how were you aware of this -- of
5 the emission designator incorrect -- I'll start all over
6 again. Strike that. How were you aware of the incorrect
7 emission designator as a long standing problem?

8 A I believe from Mr. Lehmkuhl advised me of it.

9 Q Okay I'd like you to take a look at Exhibit 34
10 which is a memo that you've looked at previously. It's the
11 April 28 memo from Mike Lehmkuhl to Behrooz Nourain, copy to
12 Peter Price.

13 THE WITNESS: I have it.

14 BY MR. BECKNER:

15 Q Okay on the second of the memo there's a statement
16 that on March 21, 1995, I amended all the applications that
17 had the incorrect emission designator. Do you see that?

18 A Right.

19 Q Okay. Now if you go back to the list of
20 prematurely activated sites that's in the surreply at page
21 two, do you have that, sir?

22 A What am I looking for?

23 MR. SPITZER: Exhibit 18, page 2

24 Q Page 2 of exhibit 18.

25 A Page two of exhibit 18?

1 Q Yes.

2 A Okay.

3 Q You'll notice that there's an address of 2727
4 Palisades there?

5 A Correct.

6 Q Do you see that? And do you also see that there's
7 an address of 200 East 32nd Street?

8 A Yes.

9 Q In that list. Okay. Now the applications for
10 those two addresses were filed after the date in which Mr.
11 Lehmkuhl said that he fixed all the incorrect emission
12 designators.

13 A Is that a question.

14 Q That's a statement. So the question is, how is
15 true that the processing for each of above referenced sites
16 the statement made on page three of the surreply has
17 exceeded the norm due to the frequency coordinator's use of
18 incorrect designators?

19 A Well assuming what you say to be true, I guess
20 it's not a completely accurate statement.

21 Q Well the HDO in this case specifies that the
22 application and it's not been disputed for 2727 Palisades
23 was filed on March 24, 1995, three days after Mr. Lehmkuhl
24 said that he had -- that he had fixed all of the then
25 pending applications with the correct designator.

1 And the HDO also specifies that the application
2 for 200 East 32nd Street was filed on March 23, 1995, two
3 days after Mr. Lehmkuhl said that he had fixed all the
4 applications that had an incorrect emission designator.

5 So there's no way that you can think of as you sit
6 here now that those two applications could have been delayed
7 as a result of an incorrect emission designator, isn't that
8 right?

9 A I suppose not unless they had originally been
10 prepared with an incorrect emission designator and then they
11 had to go back and correct it before they were filed.

12 Q Well if that had been the case, don't you think it
13 would have been likely that Mr. Lehmkuhl would have
14 mentioned that in his memo of April 28th? The one in which
15 he reports that on March 21, 1995, he amended all the
16 applications that had incorrect emission designator?

17 A You're asking me to read his mind.

18 Q No I'm not asking you to read his mind. I'm just
19 saying, don't you think -- don't you believe it would be
20 likely that if Mr. Lehmkuhl had filed incorrect applications
21 on March 23rd and March 24th that he would have reported
22 that fact in the memo of April 28th which he reported that
23 he had fixed all the defective applications of March 21st?

24 MR. SPITZER: Your Honor, I'm going to object to
25 that.

1 JUDGE SIPPEL: I'll sustain that objection.

2 BY MR. BECKNER:

3 Q Let's go to page three again of the surreply
4 that's Exhibit 18. The next sentence says Mr. Nourain
5 perhaps inadvisably assumed grant of the STA requests which
6 in his experience had always been granted within a matter of
7 days of filing. And thus rendered the paths operational.

8 And then there's a reference to exhibit 2 which is
9 Mr. Nourain's verification of the pleading. Was there any
10 other information that you received from Mr. Nourain other
11 than his verification that was the basis for the sentence
12 I've just read?

13 A I think he imparted this information to me.

14 Q Okay. So he had told you that he assumed that STA
15 requests had been granted?

16 A Yes.

17 Q Okay. And at the time that he told you this, you
18 were aware were you not that Liberty had just filed STA
19 requests for all of these paths on May 4th?

20 A I think this referred to an understanding that Mr.
21 Nourain had that STA requests had been and were being filed
22 with respect to applications as they were being filed. I
23 don't think it -- it wasn't intended very specifically to
24 the May 4 STA requests.

25 Q Okay I wasn't suggesting that it was intended to

1 refer to the May 4 STA requests. What I simply want to know
2 is in your discussion with Mr. Nourain which lead to this
3 statement here filed on Liberty's behalf, that we just read,
4 he told you that he assumed STA requests were being granted,
5 is that right?

6 A Right.

7 Q Okay. Now you knew that in fact STA requests
8 hadn't even been filed at the time he made this statement to
9 you did you not? That they were only filed a few days ago
10 in May?

11 A Well this is the same question. I think Mr.
12 Nourain was of the -- I wasn't referring to -- this wasn't a
13 reference to the May 4 STA request. I think Mr. Nourain was
14 of the understanding that STA requests were filed along with
15 or within some proximity to applications after they were
16 filed.

17 Q So --

18 A And that it was those STA requests phantom STA
19 requests I suppose if you want to call them.

20 Q Okay so what --

21 JUDGE SIPPEL: Wait let him finish.

22 MR. BECKNER: I'm sorry.

23 THE WITNESS: I'm finished.

24 BY MR. BECKNER:

25 Q So what he told you was that he thought that STA

1 requests were being filed around the time when applications
2 were being filed?

3 A Correct.

4 Q Okay. In the discussion that you had with him,
5 did you mention at all or ask him whether or not he recalled
6 receiving any of the inventories that Mr. Lehmkuhl had
7 prepared?

8 A No I did not ask him about the inventories.

9 Q And do you recall thinking in your mind -- strike
10 that. You testified earlier that as far as you knew, there
11 was no standard procedure whereby your firm would file STA
12 requests concurrently with applications unless they were
13 specifically asked to do so, is that right?

14 A Right.

15 Q That as far as you knew there was no standard
16 procedure by which your firm filed STA requests concurrently
17 with applications as an automatic thing?

18 A Right. At that time we were not doing that.

19 Q Okay. Did Mr. Nourain tell you that he had
20 requested that STA requests be filed in conjunction with
21 these applications for the paths when you were interviewing
22 him for this paper here, the surreply?

23 A No.

24 Q Excuse me?

25 A No.

1 Q All right. Did you ask him why -- did you ask Mr.
2 Nourain why he thought that STA requests were being filed
3 for these paths at the same or around the same time as
4 applications were being filed?

5 A No I don't recall if I asked him that question.

6 Q Were you at all concerned when -- when Mr. Nourain
7 told you this information that there was a huge
8 misunderstanding that apparently had taken place that Mr.
9 Nourain thought that STA requests were being filed and they
10 weren't being filed?

11 A I was concerned that Liberty was operating paths
12 without authority to do so.

13 Q And you weren't concerned that this outcome, that
14 is operating paths without authority was the result of a
15 misunderstanding between Mr. Nourain and your law firm?

16 A I don't -- I don't know that I had that concern.

17 Q All right. Did Mr. Lehmkuhl ever take a look at
18 this surreply in draft form to your knowledge?

19 A I don't recall.

20 Q Now you were aware were you not at the time you
21 were drafting this surreply that Mr. Lehmkuhl and Mr.
22 Nourain had had dealings with each other over the preceding
23 months, isn't that right?

24 A That's correct.

25 Q Okay. And I take it that you didn't feel any need

1 to speak to Mr. Lehmkuhl to verify the truth of statements
2 that Mr. Nourain was making about what he knew and what he
3 assumed.

4 MR. SPITZER: I'm going to object, Your Honor.

5 JUDGE SIPPEL: What basis?

6 MR. SPITZER: It's contrary to testimony.

7 JUDGE SIPPEL: Re-ask it. Ask the witness if he
8 agrees with your recall. Sustain the objection.

9 BY MR. BECKNER:

10 Q Mr. Barr were you aware that Mr. Nourain and Mr.
11 Lehmkuhl during the months preceding the preparation of the
12 surrepley had been in communication with each other in
13 connection with the filing of applications on Liberty's
14 behalf?

15 A Right I knew that the two were in touch with each
16 other.

17 Q All right. And now I'd like to ask you is that
18 given that you had that knowledge or awareness, did you feel
19 it necessary to check with Mr. Lehmkuhl to verify the
20 accuracy of statements that Mr. Nourain was making to you
21 about what he knew or what he assumed was being done in
22 connection with applications?

23 A Well Mr. Lehmkuhl may have reviewed this so my
24 answer to your previous related question is I don't recall
25 if I did. He may have.

1 Q I don't know that you've answered the question
2 that I've asked you this time.

3 JUDGE SIPPEL: I think what he's asking you is did
4 you use Mr. Lehmkuhl as a resource to verify information
5 that was being given to you by Mr. Nourain? Or did you just
6 take Mr. Nourain as being the sole authority on the accuracy
7 of this information?

8 THE WITNESS: That I really don't recall.

9 JUDGE SIPPEL: You don't recall that?

10 THE WITNESS: Again I may have given this to Mr.
11 Lehmkuhl to review, I might not have. I just don't recall.

12 JUDGE SIPPEL: Well I'm not saying -- you're
13 making it sound very formal. I'm not saying that, you know,
14 you gave it to him to review. Nourain is giving you some
15 key information about this. Did you -- did you -- did you
16 go down and talk to Mr. Lehmkuhl and say "he's telling me
17 this, do you know" anything like that going on between you
18 and Mr. Lehmkuhl?

19 THE WITNESS: It very could have, but again I
20 don't have a specific recollection one way or the other.

21 JUDGE SIPPEL: You would have -- you wouldn't
22 have an aversion to working that way with Mr. Lehmkuhl would
23 you?

24 THE WITNESS: No.

25 JUDGE SIPPEL: Or negative feeling -- I mean he's

1 a good source of information for you isn't he?

2 THE WITNESS: No right I wouldn't have a negative
3 feeling about that.

4 JUDGE SIPPEL: But you just don't have a
5 recollection?

6 THE WITNESS: No.

7 MR. BECKNER: Your Honor, did you have another
8 question?

9 JUDGE SIPPEL: No that's all.

10 MR. BECKNER: Okay.

11 JUDGE SIPPEL: Go ahead.

12 BY MR. BECKNER:

13 Q Now Mr. Barr did you -- did you -- did you ask Mr.
14 Price or did he tell you what he knew about the status of
15 Liberty's applications at the FCC during the first four
16 months or first three months of 1995 in conjunction with
17 your work and preparing the surreply which has been marked
18 as Exhibit 18?

19 A I'm not sure I understand the question.

20 Q Well let's -- let me direct your attention to a
21 particular sentence. In the middle of the paragraph we've
22 been looking at there is a sentence that says " to compound
23 the situation, the administration department failed to
24 notify Mr. Nourain that grant of Liberty's applications was
25 being held up indefinitely as a result of the Time Warner

1 petitions.

2 And there's a citation to exhibits one and two
3 which I believe are the verifications of Mr. Price and Mr.
4 Nourain. With respect to that sentence, did you get any
5 information from Mr. Price that found its way into that
6 sentence I just read?

7 A Yes, I think I obtained that information from Mr.
8 Price.

9 Q Okay. Did Mr. Price tell you that he knew that
10 the grant of Liberty's applications was being held up as a
11 result of Time Warner Petitions but he just never told that
12 information to Mr. Nourain, is that -- is that what he told
13 you? In substance, is that what he told you?

14 A Yes, I think so.

15 Q Okay. Did you consider whether or not you should
16 report to the Commission in this surreply the fact that Mr.
17 Price knew that these applications were being held up as a
18 result of the petition to deny?

19 A I don't think I considered that. Well I think
20 it's -- I think that that's implied in here at least, but --

21 Q But as far as you were concerned then, Liberty's
22 obligation to advise the Commission about the situation was
23 discharged if it talked about what Mr. Nourain knew and what
24 he did?

25 A I think this was an initial attempt to give -- to

1 advise the Commission of the facts of the unauthorized
2 service.

3 Q Well by that I mean do you mean then that -- that
4 your intent was in some later document to fill the
5 Commission in on what Mr. Price knew?

6 A No that's not what I said.

7 JUDGE SIPPEL: How would anybody reading this
8 document know who the personalities were in the
9 Administration Department?

10 THE WITNESS: You can't glean that from the
11 document.

12 MR. BECKNER: Any more questions, Your Honor.

13 JUDGE SIPPEL: No.

14 MR. BECKNER: Okay.

15 BY MR. BECKNER:

16 Q Is there anything in the document, Mr. Barr, where
17 Liberty tells the Commission that this information is
18 tentative and maybe you shouldn't rely on it. It's
19 incomplete. We're still investigating. Is there any
20 qualification like that in this document?

21 JUDGE SIPPEL: Let's go off the record while he
22 reads.

23 THE WITNESS: No I don't see any such
24 qualification.

25 //

1 BY MR. BECKNER:

2 Q I want to go back to one other statement here that
3 -- this first sentence in the paragraph that begins
4 application processing. Did you --

5 A What page are you on?

6 Q On page 3 of 18. Did you make any attempt to
7 match up the date an application was filed with the date
8 that's -- that Liberty commenced service in a building with
9 respect to the -- sites --

10 A No that I --

11 Q -- that are identified here?

12 A No at that time I don't believe I did.

13 Q Okay. Did you attempt to determine how long each
14 of the applications for the sites referenced on page two of
15 the exhibits, how long each of those applications had been
16 pending?

17 A No I don't believe I did.

18 Q Okay. What was the basis then, if, you know, for
19 the statement that application processing for each of the
20 above referenced sites has exceeded the norm?

21 JUDGE SIPPEL: Where are you with that language?

22 MR. BECKNER: Page three of exhibit 18, Your
23 Honor.

24 JUDGE SIPPEL: Do you have the reference Mr. Barr?

25 A Right. Well again I had an understanding that a

1 large number of Liberty applications were afflicted with
2 this emission designator problem that had existed for some
3 time. And that the buildings listed fell within that
4 category.

5 Q But I take it from your answer that you didn't
6 actually go and check each building to see when the
7 application had been filed and how long it had been pending?

8 A No I think I was given the information that that
9 these applications were afflicted with that problem I
10 accepted that as true.

11 Q And that information came to from Mr. Nourain?

12 A Possibly Mr. Nourain, possibly Mr. Lehmkuhl.

13 Q Now Mr. Lehmkuhl would have been able to tell you
14 precisely when each of the applications for these buildings
15 had been filed would he not?

16 A That's probably true, yes.

17 Q I mean that -- that information he keeps in a --
18 in a computer database isn't that right?

19 A Right.

20 Q Okay.

21 A But as I said before, and I think you
22 misunderstood me. I think there's a possibility that some
23 of these were originally the application process commenced
24 with the incorrect emission designator and that before they
25 were filed it was caught and the engineering was regenerated

1 which necessarily would have delayed the filing.

2 Q Well now is this possibility something that's
3 coming to your mind now or is that in fact an investigation
4 that you made at the time you drafted this surreply?

5 A I merely raise it as a possibility.

6 Q Okay. Was the surreply reviewed in draft by the
7 Constantine firm?

8 A Yes.

9 Q Was it reviewed in draft by the Ginsberg Feldman
10 firm?

11 A I believe so, yes.

12 Q Okay. And as the -- did you receive the comments
13 from those two firms about the draft?

14 A Yes.

15 Q Okay. Do you recall whether or not there were any
16 significant changes made to your draft as a result of those
17 comments?

18 A I don't recall specifically.

19 Q I want you to turn to page six of the surreply
20 near the bottom of the page. There's a paragraph here that
21 looks and I haven't matched it up word for word but it looks
22 very similar to the paragraph that we talked about in the
23 STA request.

24 And it contains this this 30 day number. And I
25 simply want to ask you is whether or not if, you know, where

1 the 30 day number came from in this paragraph that is on the
2 bottom of page six of the surreply?

3 A I think it's safe to say that probably beginning
4 on page five with the majority of this was gleaned from one
5 or more of those STA requests.

6 Q Okay so you just simply copied language from the
7 STA requests and inserted it into the argument in this paper
8 here?

9 A I think that's right.

10 Q All right. Now in this document, at the very last
11 page, page seven, the one that you signed, is the word --
12 Liberty reiterates here its request for Special Temporary
13 Authority. Do you see that language?

14 A Hmm mmm.

15 JUDGE SIPPEL: Is that answer yes?

16 A Yes. I'm sorry.

17 Q And that language by that language you're
18 referring to those requests that were filed on May 4, 1995?

19 A Correct.

20 Q Okay. And I take it that you felt no reason here
21 to explain to the Commission why the May 4th requests were
22 filed without disclosing to the Commission that they were in
23 part for paths that were already activated?

24 A The -- the -- the primary purpose of the document
25 was to advise the Commission of the facts as they were known

1 at that time.

2 Q Now this document also does not state that the
3 discovery of the unlicensed operation was the result of
4 anything other than Time Warner's allegations that were
5 filed in its reply. I mean is that correct?

6 MR. SPITZER: Your Honor, I think that's a
7 misstatement of what the document says. If implicit is a
8 statement that it does affirmatively state what Mr. Beckner
9 said.

10 JUDGE SIPPEL: Well I'll sustain the objection.
11 Just rephrase the question please.

12 BY MR. BECKNER:

13 Q Does the document indicate that -- that these
14 unlicensed facilities were discovered by Liberty prior to
15 the filing of Time Warner's reply that alleges the existence
16 of two unlicensed paths?

17 A No I don't think it does.

18 Q Was there any consideration given to explaining
19 that to the Commission?

20 A I don't really recall.

21 Q Before you actually sat down to -- to draft this
22 surreply, did you have discussions with the lawyers from the
23 other firms involved about what would be in the surreply in
24 some sort of general way?

25 A I don't have a recollection of doing that, no.

1 Q Okay. Do you recall whether or not well strike
2 that. Do you recall when you received a copy of Time
3 Warner's reply alleging the existence of two unlicensed
4 sites?

5 A Early May.

6 Q Excuse me?

7 A Early May.

8 Q Okay. And if you'd like to refer to that --
9 that's Exhibit 19. I'm sorry it's not Exhibit 19. Strike
10 that. I'm sorry I was mistaken. What was your reaction
11 when you saw the Time Warner reply alleging the existence of
12 two unlicensed paths by Liberty? What did you think?

13 A That Liberty needed to step up what it was doing
14 in terms of supplying information to the Commission about
15 this. I had advised Mr. Price before hand that they needed
16 to act quickly on this. I had because of this possibility,
17 I had advised that there was a possibility that Time Warner
18 could independently discover that Liberty was operating some
19 unauthorized paths.

20 Q Did you tell him this in the April 27th phone
21 call?

22 A Right it was that day.

23 Q Okay. Prior to receiving a copy of the Time
24 Warner reply, which alleged the existence of two unlicensed
25 paths, were you yourself involved in any of the -- in any

1 preparation of a document to be filed with the FCC
2 disclosing what Liberty knew about it's unlicensed paths?

3 A At that point, no.

4 Q Okay. So you began work on such a document after
5 the Time Warner filing came into your office?

6 A I think that's right.

7 Q Okay. If you'd like to review your time records
8 which are Exhibit 44 to refresh your recollection, I
9 certainly invite you to do so. The May time begins at page
10 17505.

11 A Well the records will reflect that it is after
12 that.

13 Q Okay. And as far as you know the records are
14 accurate in that regard?

15 A I'd like to hope so.

16 Q Okay I'd like you to turn to Time Warner
17 Cablevision Exhibit 22. I'm sorry strike that. Exhibit 21
18 which is a copy of a letter addressed to Michael B. Hayden.

19 A I have the document.

20 Q Okay. Now you recall that this letter was a
21 response to a request for information that Mr. Hayden had
22 submitted to you and Henry Rivera in your capacity as
23 Counsel for Liberty?

24 A Yes, that's my recollection.

25 Q Okay. And if you want to look at that, that's in

1 the book at Exhibit 20.

2 A Yes.

3 Q All right. Now there's one other exhibit that I
4 want to just direct your attention to if you can keep your
5 book open to Time Warner Cablevision Exhibit 21 that's your
6 letter. And that is Liberty Exhibit 3 which I think is in a
7 separate book or in a rubber band.

8 Okay do you have Liberty Exhibit 3, that's Mr.
9 Price's letter to Michael Hayden dated June 16?

10 A Yes, I do.

11 Q Okay. I just -- the first question I want to ask
12 you is Mr. Price's letter refers to Liberty's response by
13 counsel to the questions asked in your letter dated June 9,
14 1995. Do you believe that Exhibit 21 is in fact that letter
15 that Mr. Price is referring to?

16 A Yes. I believe that's correct.

17 Q Okay. I'm -- going to return now to Exhibit 21 so
18 if you want to put Mr. Price's letter aside, that's all
19 right. Did you draft the letter which is Exhibit 21 Mr.
20 Barr?

21 A Portions of it, yes.

22 Q Okay. Can you identify for us the portions that
23 you drafted or conversely the portions that you didn't draft
24 if that's easier?

25 MR. SPITZER: Your Honor, I just note it's a 17

1 page letter and --I don't know if there's some way to
2 facilitate this.

3 JUDGE SIPPEL: Do you want him to review the whole
4 letter and then answer your question?

5 MR. BECKNER: Well I mean the letter is divided up
6 into headings. I was thinking that he might be able to
7 identify a particular heading that he can say he didn't
8 write or whatever. I mean I don't want to be too
9 burdensome, but --

10 JUDGE SIPPEL: Well let's go off the record while
11 he looks at the document.

12 A This was a cooperative effort between myself and
13 people at the Constantine firm as well as the Ginsberg firm.
14 I don't think that I could say with any degree of certainty
15 that yes I drafted all of section 1A while somebody at
16 Constantine and Partners drafted all of 1B. It was a
17 cooperative effort, much like everything else was.

18 Q Well I appreciate that. Can you tell us though,
19 whether or not the initial first draft was something that
20 you wrote or did people contribute pieces of the initial
21 first draft?

22 MR. SPITZER: Judge, I have a relevance objection.
23 I just don't know difference it makes.

24 MR. BECKNER: Well I don't know either, Your
25 Honor.

1 JUDGE SIPPEL: Do you want to make a proffer on
2 this in the absence of the witness? Or --

3 MR. BECKNER: Well I can't make a proffer because
4 I have not deposed this witness before as you know.

5 JUDGE SIPPEL: I know that. I know that. But I -
6 - the purpose of this is not to take his deposition. I mean
7 I know you're -- you're handicapped a bit on this, but this
8 is a very very tedious process we're going through.

9 MR. BECKNER: Well I'm simply just trying to I
10 mean I'm going to ask him about certain parts of it and
11 maybe we can just do that and --

12 JUDGE SIPPEL: Why don't we do that. Go to the
13 parts that you're curious about and then let's see what he
14 knows about it.

15 MR. BECKNER: Okay, that's fine.

16 BY MR. BECKNER:

17 Q Okay I'd like to direct your attention to page 007
18 of the Exhibit, Mr. Barr, that's also Page 7 of the letter.
19 The part that begins with capital letter C The Timing of the
20 STAs.

21 A I see where you're directing me.

22 Q Okay.

23 JUDGE SIPPEL: Is there a question?

24 MR. BECKNER: I'm just giving him a chance to read
25 it now.

1 BY MR. BECKNER:

2 Q Okay. Can you tell us whether or not you remember
3 whether or not that particular paragraph that begins with
4 the words Time Warner also alleges and then ends with the
5 reference to Exhibit 1 on the top of page 8, was that
6 paragraph something that you wrote initially?

7 A It very well might be. As I said, I I don't think
8 I can go through sentence by sentence and say who wrote it
9 and who didn't.

10 Q Did you --

11 A It was a cooperative effort.

12 Q Okay.

13 A I think you're asking me to do the impossible.

14 Q Did you conduct any kind of interview with Mr.
15 Nourain in conjunction with your preparation of this letter?

16 A Yes, I did.

17 Q Okay. And do you recall whether or not Mr.
18 Nourain personally told you during this interview, the
19 information that's contained at the top of the page 008
20 about his mistaken assumptions?

21 A He did. I did not make this up.

22 Q Okay. Did -- as I had asked you with respect to
23 the surreply did you discuss with Mr. Lehmkuhl the accuracy
24 of Mr. Nourain's statements with regard to these mistaken
25 assumptions?